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May 3, 1996

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William F. Caton, Acting Secretary  
Federal Communications Commission  
Washington, D.C. 20554  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

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NEW YORK, NY 10022-2555

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NEWARK, NJ 07102-5397

SPECIAL COUNSEL  
JEROLD L. JACOBS

Re: MM Docket No. 96-43  
FM Table of Allotments  
Frederiksted, Virgin Islands

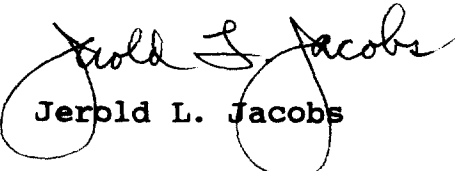
DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Enclosed herewith for filing, on behalf of our client, D/B/A Calypso Communications, are an original and four (4) copies of its "COUNTERPROPOSAL AND COMMENTS OF CALYPSO COMMUNICATIONS" in the above-referenced proceeding.

Please direct all inquiries and communications concerning this matter to the undersigned.

Very truly yours,

  
Jerold L. Jacobs

Enc.

cc: As on Certificate of Service (all w/enc.)

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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**MAY 23 1996**

In the Matter of  
  
Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations  
(Frederiksted and Charlotte Amalie,<sup>1</sup>  
Virgin Islands)

)  
)  
) MM Docket No. 96-43  
) RM-8754  
)  
) RM-  
)

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

TO: Chief, Allocations Branch  
Mass Media Bureau

**COUNTERPROPOSAL AND COMMENTS OF  
CALYPSO COMMUNICATIONS**

**D/B/A CALYPSO COMMUNICATIONS** ("Calypso"), permittee of Station WVNX(FM), Charlotte Amalie, Virgin Islands, by its attorneys, pursuant to §§1.415 and 1.420(d) of the Commission's Rules, hereby submits its Counterproposal and Comments in opposition to the Notice of Proposed Rule Making ("NPRM"), DA 96-208, released March 12, 1996, herein. In support whereof, the following is shown:

1. Responding to a petition for rulemaking filed by José J. Arzuaga ("Arzuaga"), the NPRM proposes to allot Channel 297B1 to Frederiksted, Virgin Islands as that community's third local FM transmission service (NPRM, ¶1). The objectives of Calypso's Counterproposal are threefold: (a) allot Channel 297B1 to Charlotte Amalie, instead of Frederiksted; (b) modify Calypso's construction permit to specify operations on Channel 297B1, instead of Channel 246B, pursuant to §1.420(g) of the Rules, without allowing other expressions of interest; and (c) delete Channel 246B from the FM Table of Allotments as unusable. Since neither allotment proposal

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<sup>1</sup> The community of Charlotte Amalie, Virgin Islands has been added to the caption.

would provide a first or second fulltime aural reception service or a first fulltime local transmission service, Calypso will now demonstrate that its Counterproposal deserves a dispositive preference in this proceeding under the "other public interest matters" fourth priority of FM Channel Policies/Procedures, 90 FCC 2d 88 (1982).

2. Attached hereto is an Engineering Statement ("Engineering Statement") by Mr. Neil Smith of Smith and Fisher, which fully supports allotting Channel 297B1 to Charlotte Amalie. Calypso's Counterproposal can be summarized as follows:

<u>Channel Number</u>		
<u>City</u>	<u>Present</u>	<u>Proposed</u>
Charlotte Amalie, Virgin Islands	*226A, 241B1, 246B, 250B, 271B, *275A, 282B, 287B	*226A, 241B1, 250B, 271B, *275A, 282B, 287B, 297B1

**Note: No change in present allotments for Frederiksted, Virgin Islands.**

3. It is well established that where, as here, a choice must be made between two proposed channel allotments and no first or second aural reception service or first local transmission service is involved, the Commission reaches its public interest determination by comparing and weighing all relevant engineering and socio-economic factors, including number of local services, relative size of communities, and relative overall service areas. See FM Channel Policies/Procedures, 90 FCC 2d 88, 92 n.8 (1982); FM Table of Allotments (Greenup KY and Athens OH), 2 FCC Rcd 4319, 4321 (Mass Media Bur. 1987). Applying these criteria, it is clear that Calypso's proposed Charlotte Amalie allotment enjoys a decisive preference over Arzuaga's proposed Frederiksted allotment.

4. Charlotte Amalie (12,331 persons -- 1990 U.S. Census) is the capital of the U.S. Virgin Islands. It currently has three AM services (WGOD, WSTA, and WVWI) and six FM services (WGOD-FM, WIUJ, WIVI, WIYC, WTBN, and WVGN). A seventh Charlotte Amalie FM service -- Calypso's Station WVNXX -- remains unbuilt for reasons beyond Calypso's control, which it will explain below. As stated in Arzuaga's January 11, 1996 Petition for Rulemaking (at 1), Frederiksted (1,064 persons -- 1990 U.S. Census) has one AM service -- daytime Station WRRR -- and two FM services on Channels 253A and 278A.

5. Commission allotment policy favors a general proportionality between communities' populations and the number of radio services. See Baker v. FCC, 834 F.2d 181, 183 n.4 (D.C. Cir. 1987) ("the need for radio service is assessed primarily in light of the facilities presently available in the proposed communities and their relative population"). Under that standard, the 9 to 3 ratio in aural services between Charlotte Amalie and Frederiksted compares very favorably with the 11 to 1 ratio in populations between the two cities. Therefore, Calypso urges that Frederiksted is amply served by the availability of three radio frequencies, and Arzuaga has shown absolutely no need for the allotment of a third local FM transmission service when proportionality and common experience suggest that even a single local transmission service -- let alone three -- suffices for Frederiksted's minuscule population of 1,064. Simply stated, under the Commission's obligation in §307(b) of the Communications Act of 1934, as amended, 47 U.S.C. §307(b), to "provide a fair, efficient, and equitable distribution of radio service" throughout the United States, Charlotte Amalie has a much greater public

interest need for a technically viable tenth aural service than Frederiksted has for a fourth service.<sup>2</sup>

6. This is especially so because, as explained in the Engineering Statement, grant of Calypso's channel substitution proposal is necessary to allow Calypso to implement its already-granted construction permit for Station WVNK. That permit was initially issued on June 25, 1991 (Permit File No. BPH-870707MI),<sup>3</sup> but it is not usable because operation on Channel 246B would result in mutually destructive interference with respect to Channel 247C, which is authorized in Tortola, British Virgin Islands. Id.

7. In 1992, when efforts to resolve this foreign interference through diplomatic negotiations with the British Virgin Islands failed, Calypso filed a petition for rulemaking seeking to substitute Channel 267B for Channel 246B. The Commission issued a Notice of Proposed Rulemaking in MM Docket No. 92-244, 7 FCC Rcd 7236 (Mass Media Bur. 1992), which proposed to adopt Calypso's channel substitution proposal; however, to Calypso's shock and dismay, the Commission subsequently released a Report and Order ("R&O"), 10 FCC Rcd 8111 (Mass Media Bur. 1995), in which it allotted Channel 267B to another Virgin Islands

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<sup>2</sup> Charlotte Amalie and Frederiksted are located on the islands of St. Thomas and St. Croix, respectively. The 1.0 mV/m contour of Calypso's proposed allotment encompasses St. Thomas (48,166 persons -- 1990 U.S. Census population) as well as the island of St. John (3,504 persons). The 1.0 mV/M contour of Arzuaga's proposal encompasses St. Croix only (50,139 persons). Thus, the total estimated audience to be served by Calypso's Counterproposal (51,670) exceeds Arzuaga's proposal (50,139), and this fact also has decisional significance in a comparative analysis. See FM Channel Policy/Procedures, supra, and Paragraph 3 above.

<sup>3</sup> Channel 246B was allotted to Charlotte Amalie by Report and Order in MM Docket No. 86-290 (Charlotte Amalie VI), 2 FCC Rcd 1939 (Mass Media Bur. 1987). The filing window for new-station applications to effectuate the allotment closed on June 18, 1987, with no applications having been filed. Calypso filed its application on a "first come/first serve" basis on July 7, 1987, but no construction permit was issued until June 25, 1991.

community and left WVNIX on unusable Channel 246B. The Commission confirmed in the R&O (10 FCC Rcd at 8113 ¶10) Calypso's technical assessment of its inability to construct a station on Channel 246B and held that allowing a channel substitution for Station WVNIX was "warranted". Nevertheless, it concluded that it could not find an allotment solution for both FM stations that were adversely affected by British Virgin Islands allotments, and the Commission ruled that the other adversely affected permittee (Station WDCM, Cruz Bay, Virgin Islands) had a greater public interest need for the allotment. See R&O, supra, 10 FCC Rcd at 8114 ¶10.

8. Calypso urges that it is now Station WVNIX's turn for relief, consistent with the Commission's allotment policies. As the Engineering Statement demonstrates, no channel is available for Class B operation by WVNIX at Charlotte Amalie. Indeed, even if WVNIX were downgraded to Class B1, as Calypso proposes, only Channel 297 would be available for its use. Id. Thus, in order to make Calypso's construction permit for Station WVNIX viable, it is necessary for Calypso to offer this Counterproposal, which requires the downgrading of its proposed operations to Class B1 and the substitution of Channel 297 for Channel 246.<sup>4</sup> Id. Put differently, the Commission originally allotted Channel 246B to Charlotte Amalie in 1987 (see footnote 3, supra), and Calypso's Counterproposal merely seeks to implement that nine-year-old allotment judgment at the present time with a viable frequency. Calypso submits that Arzuaga's proposal does not have any such equity and deserves no allotment preference.

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<sup>4</sup> This necessary downgrading does not require entertaining other expressions of interest in the frequency under §1.420(g) of the Rules, because no upgrade is involved. See FM Table of Allotments (Thief River Falls and Walker MN), 8 FCC Rcd 2944 (Mass Media Bur. 1993) (frequency downgrading approved without allowing other expressions of interest); FM Table of Allotments (Shingle Springs and Quincy CA), 7 FCC Rcd 3113 (Mass Media Bur. 1992) (same); cf. FM Table of Allotments (Salem and Cherokee Village AR), 11 FCC Rcd 1082 (Mass Media Bur. 1996) (§1.420(g) does not apply where no upgrade in facilities is requested).

9. In sum, Calypso's Counterproposal should prevail over Arzuaga's proposal because: (a) it permits the Commission to resolve a technical interference impasse whereby Calypso is currently required to construct Station WVNK on an unusable frequency at Charlotte Amalie; and (b) it allows Charlotte Amalie to obtain a usable seventh FM transmission service, which was originally allotted in 1987 and for which it has a greater need than Frederiksted under established allotment criteria. Calypso hereby indicates its intention to promptly file an application to implement operation on Channel 297B1 at Charlotte Amalie, if that allotment is adopted by the Commission.

WHEREFORE, in light of the foregoing, D/B/A Calypso Communications respectfully requests that the Commission should grant its Counterproposal, deny Arzuaga's Frederiksted proposal, and amend the FM Table of Allotments as set forth in Paragraph 2, supra.

Respectfully submitted,

**D/B/A CALYPSO COMMUNICATIONS**

By   
Howard J. Braun  
Jerold L. Jacobs

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(202) 463-4640

Its Attorneys

Dated: May 3, 1996

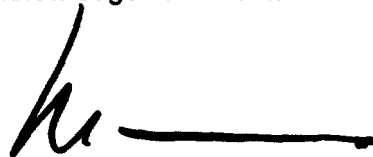
ENGINEERING STATEMENT

The engineering data contained herein have been prepared on behalf of CALYPSO COMMUNICATIONS, permittee of WVN(X)(FM), Charlotte Amalie, Virgin Islands, in support of its Comments and Counterproposal in MM Docket No. 96-43.

WVN(X) is authorized to operate on Channel 246B. However, there is authorized in Tortola, British Virgin Islands, a Class C station on Channel 247. Because the implementation of the WVN(X) permit would result in mutually destructive interference with respect to this Tortola facility, Calypso Communications has been unable to construct WVN(X).

Study indicates that no other channel is available for Class B operation by WVN(X). We further found that even if WVN(X) were downgraded to Class B1, only one channel, 297, would be available for its use. However, it has been proposed in the subject proceeding that Channel 297B1 be allotted to Frederiksted, Virgin Islands. Because no other channel is available to WVN(X), it is necessary that it offer this counterproposal, under which Channel 297B1 would be allotted not to Frederiksted but to Charlotte Amalie for use by WVN(X), and that Channel 246B would be deleted from Charlotte Amalie. The attached tabulation shows that Channel 297B1 can be used at the authorized WVN(X) site in full compliance with the Commission's separation requirements.

I declare under penalty of perjury that the foregoing statements and the attached tabulation are true and correct to the best of my knowledge and belief.



NEIL M. SMITH

May 2, 1996



## ALLOCATION STUDY DATA

PROPOSED WVN(X)FM  
 CHANNEL 297B1 - CHARLOTTE AMALIE, VIRGIN ISLANDS

<u>Channel</u>	<u>Closest Allotment</u>	<u>Spacing (km.)</u>		
		<u>Required</u>	<u>Proposed</u>	<u>Clear</u>
243B	WDOY, Fajardo, P. R.	17	112	+ 95
244	*			
294	*			
295B	WMEG, Guayama, P. R.	71	142	+ 71
296	*			
297B	WCMN-FM, Arecibo, P. R.	211	220	+ 9
298	*			
299B	WAHQ, Carolina, P. R. (Lic.)	71	140	+ 69
	WAHQ, Carolina, P. R. (Appl.)	71	112	+ 41
300	*			

\* No allotment within 1500 kilometers

**CERTIFICATE OF SERVICE**

I, Yvonne Corbett, a secretary in the law offices of Rosenman & Colin LLP, do hereby certify that on this 3rd day of May, 1996, I have caused to be mailed, or hand-delivered, a copy of the foregoing "**COUNTERPROPOSAL AND COMMENTS OF CALYPSO COMMUNICATIONS**" to the following:

John A. Karousos, Chief\*  
Allocations Branch  
Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 554  
Washington, D.C. 20554

Ms. Sharon P. McDonald\*  
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**COUNSEL FOR JOSE J. ARZUAGA**

  
\_\_\_\_\_  
Yvonne Corbett

**\*BY HAND**